

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

U.S. BANK, NATIONAL ASSOCIATION,
a national banking association,

Plaintiff,

v.

MICHAEL S. QUALIZZA,
individually,

NEIL D. FREEMAN,
individually,

and

TIMOTHY J. DIXON,
individually,

Defendants.

No. _____

COMPLAINT

COMES NOW Plaintiff, U.S. Bank, National Association, and for its Complaint
against Defendants Michael S. Qualizza, Neil D. Freeman and Timothy J. Dixon states:

Jurisdiction and Venue

1. Plaintiff, U.S. Bank, National Association (“U.S. Bank”) is a national banking
association with its main office located in the State of Ohio, and its principal place of business in
Minneapolis, Minnesota. U.S. Bank is a citizen of the State of Ohio.

2. Defendant Michael S. Qualizza (“Qualizza”) is an individual residing in the State
of Texas. Qualizza is a citizen of the State of Texas.

3. Defendant Neil D. Freeman (“Freeman”) is an individual residing in the State of
Illinois. Freeman is a citizen of the State of Illinois.

4. Defendant Timothy J. Dixon (“Dixon”) is an individual residing in the State of Wisconsin. Dixon is a citizen of the State of Wisconsin.

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are of diverse citizenship and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1332.

General Allegations

7. Pursuant to the terms of a Construction Loan Agreement dated December 29, 2017, by and between 1501 Washington St. Louis, LLC, a Delaware limited liability company (“Borrower”) and U.S. Bank (as thereafter amended from time to time, the “Loan Agreement”), U.S. Bank made a loan to Borrower in the original principal amount of up to Twelve Million Three Hundred Thousand and 00/100 Dollars (\$12,300,000.00). A true and accurate copy of the Loan Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

8. To further evidence the indebtedness of Borrower to Lender pursuant to the Loan Agreement, Borrower executed and delivered to U.S. Bank a Promissory Note dated December 29, 2017 and made payable by Borrower to the order of U.S. Bank in the original principal amount of up to Twelve Million Three Hundred Thousand and 00/100 Dollars (\$12,300,000.00) (the “Note”). A true and accurate copy of the Note is attached hereto as **Exhibit B** and incorporated herein by reference.

9. In order to induce U.S. Bank to make the Loan to Borrower and to secure repayment of the Note, each of Qualizza, Freeman and Dixon (collectively, “Guarantors”) executed for the benefit of U.S. Bank a Payment Guaranty Agreement dated as of December 29, 2017 (the “Guaranty”), whereby each of the Guarantors, absolutely, unconditionally and

irrevocably, guaranteed the full and timely payment of the obligations of Borrower to U.S. Bank under or in connection with, among other things, the Loan Agreement and the Note. A true and accurate copy of the Guaranty is attached hereto as **Exhibit C** and incorporated herein by reference. The Loan Agreement, the Note, the Guaranty and all other documents evidencing or securing the Loan are collectively, the “Loan Documents.”

10. The Loan matured under the terms of the Loan Agreement and the Note on December 29, 2020 (the “Maturity Date”).

11. On numerous occasions prior to the Maturity Date, U.S. Bank notified Borrower and each of the Guarantors in writing that the Loan would mature on the Maturity Date and that U.S. Bank expected the Loan to be paid in full by Borrower or Guarantors on or before the Maturity Date.

12. On the Maturity Date, U.S. Bank again notified Borrower and each of the Guarantors in writing of the maturity of the Loan and demanded that Borrower and/or the Guarantors immediately pay the Loan. A copy of U.S. Bank’s letter to Borrower and the Guarantors dated as of the Maturity Date is attached hereto as **Exhibit D** and incorporated herein by reference.

13. As of the date hereof, neither Borrower nor any of the Guarantors have paid U.S. Bank the outstanding balance due on the Loan, which remains due and owing.

14. All conditions precedent to the liability of each of the Guarantors under the Guaranty have occurred or been satisfied. Accordingly, the entire unpaid principal balance of the Loan, accrued interest thereon, attorneys’ fees and other amounts owing on the Loan are immediately due and payable in full.

15. As of January 28, 2021, the outstanding balance due and owing on the Loan (excluding costs of collection) is \$12,140,368.93 (consisting of \$12,049,786.33 of principal and \$90,582.60 in accrued and unpaid interest). As provided for under the Loan Documents, interest continues to accrue on the outstanding principal balance of the Loan at a per diem rate of \$3,075.21.

COUNT I

(Action for Breach of Guaranty Agreement Against All Defendants)

16. U.S. Bank incorporates by reference, as if the same were fully set forth herein, the allegations contained in Paragraphs 1 through 15 of this Complaint, as and for this Paragraph 16.

17. By their execution of the Guaranty, each Guarantor absolutely, unconditionally and irrevocably guaranteed the timely payment and performance of all obligations of Borrower to U.S. Bank under or in connection with the Loan and the Loan Documents.

18. The Guaranty is the valid and binding obligation of each Guarantor to U.S. Bank, enforceable against each Guarantor in accordance with its terms.

19. The Guaranty was unconditionally delivered to U.S. Bank by each Guarantor.

20. U.S. Bank relied upon the Guaranty in extending credit to Borrower.

21. The obligations of each of the Guarantor are primary and independent in nature and may be enforced directly against each of the Guarantors.

22. As a guarantor of Borrower's obligations to repay the Loan, each Guarantor is immediately obligated, jointly and severally, to pay the entire outstanding principal balance of the Loan, plus all accrued interest and other fees and charges outstanding under the Loan Documents.

23. U.S. Bank has demanded that the Guarantors pay all outstanding amounts owed under the Note and the Loan Documents and Guarantors have failed to make payment as obligated, thereby breaching the terms of the Guaranty.

24. As of January 28, 2021, the outstanding balance due and owing under the Loan Documents (excluding costs of collection) is \$12,140,368.93 (consisting of \$12,049,786.33 of principal and \$90,582.60 in accrued and unpaid interest). As provided for under the Loan Documents, interest continues to accrue on the outstanding principal balance of the Note at a per diem rate of \$3,075.21.

25. The Guaranty also obligates Guarantors to pay all of U.S. Bank's costs, fees and expenses, including without limitation, attorneys' fees, incurred in connection with the enforcement of the Note and all of the security therefor, including the Guaranty.

26. U.S. Bank has incurred and continues to incur costs of collection, including attorneys' fees, in attempting to enforce the obligations under the Guaranty and the other Loan Documents.

27. As a result of the Guarantors' breach of the terms of the Guaranty, as of January 28, 2021, U.S. Bank has been damaged in the principal amount of Twelve Million Forty-Nine Thousand Seven Hundred Eighty-Six and 33/100 Dollar (\$12,049,786.33), plus accrued and unpaid interest in the amount of Ninety Thousand Five Hundred Eighty-Two and 60/100 Dollars (\$90,582.60), plus interest which continues to accrue on the outstanding principal balance of the Note from and after January 28, 2021, until final payment, at a per diem rate of Three Thousand Seventy-Five and 21/100 Dollars (\$3,075.21), plus costs, fees and expenses, including attorneys' fees, incurred by U.S. Bank to enforce Borrower's and Guarantors' obligations under Note, the Guaranty and the other Loan Documents.

WHEREFORE, U.S. Bank respectfully requests that this Court enter a judgment in favor of U.S. Bank and against Defendants Michael S. Qualizza, Neil D. Freeman and Timothy J. Dixon, jointly and severally, in an amount not less than principal amount of Twelve Million Forty-Nine Thousand Seven Hundred Eighty-Six and 33/100 Dollars (\$12,049,786.33), plus accrued and unpaid interest in the amount of Ninety Thousand Five Hundred Eighty-Two and 60/100 Dollars (\$90,582.60), plus interest accruing at the rate of Three Thousand Seventy-Five and 21/100 Dollars (\$3,075.21), together with costs of collection and attorneys' fees, and providing for such other and further relief as the Court deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

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